

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3. California Code of Regulations
Article 43. Tomatoes

INITIAL STATEMENT OF REASONS

DESCRIPTION OF THE PUBLIC PROBLEM, ADMINISTRATION REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Section 401 of the California Food and Agricultural Code declares that the California Department of Food and Agriculture (Department) shall promote and protect the agricultural industry of California. Section 402 of the Food and Agricultural Code declares that the Department shall prevent fraud and deception in any of the packing or labeling, or any phase of the marketing of agricultural products. Section 407 declares that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which he is directed or authorized to administer or enforce.

The proposed changes are intended to protect the integrity of the tomato industry as well as consumers from deceptive agricultural practices by amending the requirements for vine ripened tomatoes and establishing requirements for tomatoes labeled as greenhouse grown.

SPECIFIC PURPOSE AND FACTUAL BASIS

Section 1472.5 provides criteria for labeling tomatoes as vine ripened. The existing regulation allows tomatoes to be labeled as vine ripened if the skin surface or the flesh has attained some discernible degree of pink or red color at the time it is prepared or packed for distribution.

The specific purpose of amending Section 1472.5 is to specify that a tomato labeled as vine ripened must be field grown and has attained some discernible degree of pink or red color at the time of harvesting.

Currently, Article 43 of the California Code of Regulations does not provide a definition for the term “greenhouse grown” tomatoes or criteria for labeling tomatoes as such.

The Food and Agricultural Code, Section 78636(b), provides a definition for the term “greenhouse grown” as it pertains to tomatoes. The specific purpose of amending Article 43 is to adopt this definition into the California Code of Regulation as Section 1472.8 and establish criteria for labeling tomatoes as greenhouse grown.

Additional editorial amendments will be made for consistency within the regulations and to correct citations of authority.

FACTUAL BASIS FOR THE DEPARTMENT DETERMINING THE NEED FOR THE

AMENDMENT OF THESE REGULATIONS:

Section 42684, subsection (a) of the Food and Agricultural Code declares that it is necessary to establish and maintain minimum standards of quality and maturity for fruits, nuts, and vegetables to insure that products of acceptable and marketable quality are available to the consumer.

Section 42684, subsection (e) of the Food and Agricultural Code provides the Secretary with the authority to establish, modify, or rescind any quality and maturity standard for any fruit, nut, or vegetable pursuant to this chapter, provided the Secretary: (1) finds that the regulation will provide the consumer with acceptable quality fruits, nuts, and vegetables which will also provide stability in the marketing of these products, (2) finds that the regulation will tend to prevent waste in the production and marketing of fruits, nuts, and vegetables, (3) considers the impact of the regulation upon the agricultural industry, and (4) finds that the regulation is necessary to accomplish the purpose of this chapter.

Section 42682 of the Food and Agricultural Code gives the Secretary the authority to establish, modify, or rescind by regulation, standard container, lid, marking, sizing requirements for commodities, and packing arrangement for any fruits, nuts, or vegetables, upon receiving a petition from a person that the Secretary finds has a substantial interest.

The proposed changes have been petitioned by Edward L. Beckman, President of the Advisory Committee to Standardization, on behalf of the California Tomato Commission, representing growers and handlers of fresh market tomatoes.

The California Tomato Commission cites the following arguments in support of the proposed changes:

- Existing regulations allow tomatoes to be harvested while still in the green stage, treated with ethylene gas to begin the ripening process and labeled as “vine ripened”. As a result, industry believes that the trade and consumers pay a premium price for what they believe to be a vine-ripened product, when the actual product was not allowed to ripen on the vine.
- In 2003, heavy cloud cover in southern California delayed the start of tomato season from June to mid August. More than ninety-five percent of vine-ripened tomatoes are produced in southern California. The California Tomato Commission monitored supermarket sales throughout the state during this period and noted a dramatic increase in mislabeled product. Greenhouse, hothouse, and field grown tomatoes had been harvested green, ripened with ethylene gas and labeled as “vine ripened”.
- Vine ripened tomatoes are more expensive to produce and represent a niche in the market place. Mislabeling of other tomatoes is detrimental to both consumers and the producers.
- Currently, how an individual defines greenhouse production is subjective. Some growers simply lay plastic over staked tomato plants, while other growers lay mesh or

cloth over staked plants. Both call such production “greenhouse” grown. Under the current regulation, these growers may market these tomatoes as either field or greenhouse grown.

- Growers market their tomatoes based on current market conditions. If prices for greenhouse grown tomatoes are bringing a better price, these tomatoes will be sold as greenhouse grown. If field tomatoes are bringing the higher price, then these same tomatoes will be sold as field tomatoes. Such agricultural practices are detrimental to producers who have invested in true hydroponics greenhouse operations. Houewling Nurseries, located in Oxnard, California, has over eighty acres of high-tech greenhouse tomatoes that are grown year round.
- Greenhouse tomato production is increasing throughout North America. The Commission is a founding member of the North American Tomato Trade Work Group (NATTWG), which serves as advisor to the Consultative Committee on Agricultural Trade under the United States – Canadian Free Trade Agreement. After consulting with the Canadian membership, who are investors in the Oxnard, California operation, it is the belief of the California Tomato Commission that criteria be adopted into the California Code of Regulations for tomatoes labeled as greenhouse grown to protect the interests of California producers who have multi-million dollar investments in legitimate greenhouse operation.

The Department of Food and Agriculture has complied with Section 42684, subsection (e) of the Food and Agricultural Code and finds that the proposed regulation changes are necessary to protect the integrity of the tomato industry as well as consumers from deceptive agricultural practices and will have a positive impact on the agricultural industry.

DOCUMENTS RELIED UPON

- Letter dated September 24, 2003 from Ed Beckman, President of the California Tomato Commission.
- E-mail dated March 17, 2004 from Ed Beckman, President of the California Tomato Commission.

ALTERNATIVES

The Department must determine that no alternative considered by the Department would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

ESTIMATED COSTS OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES

The Department has initially determined that no savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department has also determined that these proposed regulations do not impose a mandate on local agencies or school districts.

SMALL BUSINESS IMPACT STATEMENT

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. The Department does recognize that there could be a potential economic impact to some growers. This is based on the fact that vine ripened tomatoes tend to be sold at a higher rate than other tomatoes thus generating more revenue. Currently growers have the ability to label tomatoes as vine ripened as long as they meet the color criteria at the time of preparing or packing regardless of the growing or ripening method. Some growers are harvesting green tomatoes and treating them with ethylene to begin the ripening process. Consumers are paying a premium price for tomatoes they believe were ripened on the vine. The proposed regulation changes would no longer allow ethylene treated tomatoes to be labeled as vine ripened.

However, the Department believes the proposed regulation changes are necessary to protect the integrity of the industry as well as consumers from deceptive agricultural practices. The proposed changes meet the needs of both, the affected commodity group and the consumer, without requiring substantial changes on the part of industry.

ECONOMIC IMPACT ON AFFECTED BUSINESSES

The Department has initially determined that the proposed regulations would result in no significant costs to private businesses or individuals affected by these proposed regulations. This is based on the fact stated in the SMALL BUSINESSES IMPACT STATEMENT."